रजिस्ट्री सं० डी-(डी)-72 REGISTERED No. D-(D)-72

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 42] नई दिल्ली, बृहस्पतिवार, दिसम्बर 1, 1983/अग्रहायण, 10, 1905
No 42] NEW DELHI, THURSDAY, DECEMBER 1, 1983/AGRAHAYANA 10, 1905

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 1st December, 1983:—

BILL NO. 119 OF 1983

A Bill further to amend the Merchant Shipping Act, 1958.

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Merchant Shipping (Amendment) Act, 1983.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

44 of 1958.

Amendment of section 3

2. In section 3 of the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act), after clause (*11*), the following clause shall be inserted, namely:—

'(*11A*) "family" means,—

(*i*) in the case of male, his wife, his children, whether married or unmarried, his dependent parents and his deceased son's widow and children:

Provided that if a person proves that his wife has ceased under the personal law governing him or the customary law of the community to which the spouses belong, to be entitled to maintenance she shall no longer be deemed to be a part of such person's family for the purpose of this Act, unless such person subsequently intimates by express notice, in writing to the Central Government that she shall continue to be so regarded; and

(*ii*) in the case of female, her husband, her children, whether married or unmarried, her dependent parents, her husband's dependent parents and her deceased son's widow and children:

Provided that if a person by notice in writing to the Central Government expresses her desire to exclude her husband from the family, the husband and his dependent parents shall no longer be deemed to be a part of such person's family for the purpose of this Act, unless such person subsequently cancels in writing any such notice.

Explanation.—In either of the above two cases, if the child, or, as the case may be, the child of a deceased son, of a person has been adopted by another person and if under the personal law of the adopter adoption is legally recognised such a child shall be considered as excluded from the family of the first mentioned person.'

Amendment of section 24.

3. In section 24 of the principal Act, the following proviso shall be inserted at the end, namely:—

"Provided that subject to such order as the Central Government may issue in this behalf, when the office of registrar of Indian ships at any port is vacant or the holder of such office is on leave or is not available, for any reason, at the port to exercise and discharge the powers, duties and functions of the office, the seniormost surveyor at that port may act as, and exercise and discharge the powers, duties and functions of, the registrar of Indian ships at that port.".

Amendment of section 101.

4. In sub-section (*1*) of section 101 of the principal Act, for the words "signed by the master", the words "signed by the owner or agent and the master" shall be substituted.

Substitution of new section for section 102.

5. For section 102 of the principal Act, the following section shall be substituted, namely:—

Engagement of seaman where agreement is made out of India.

"102. Notwithstanding anything contained in any other provision of this Act, the master of a ship registered at a port outside India who has an agreement with the crew made in due form according to the law of that port or of the port in which her crew were engaged, may engage in any port in India—

(*a*) a seaman who is not a citizen of India and who holds a continuous discharge certificate or any other similar document

of identity issued by the competent authority of the country in which the ship is registered or, as the case may be, of the country in which the said agreement was made, or

(*b*) a seaman who is a citizen of India and who holds a certificate of discharge or a continuous certificate of discharge issued under this Act,

and any seaman so engaged under clause (*a*) or clause (*b*) may sign the agreement aforesaid and it shall not be necessary for him to sign an agreement under this Act .

Amendment of section 105.

6. In the principal Act, section 105 shall be re-numbered as sub-section (*1*) thereof and after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely.—

(*2*) A copy of the statement referred to in sub-section (*1*) shall also be sent to the seamen's employment office concerned.".

Amendment of section 108

7. In section 108 of the principal Act, for the portion beginning with the words unless proved to have been made and ending with the words it made out of India , the following shall be substituted, namely.—

'unless proved to have been made with the consent of all the persons interested in the erasure, interlineation or alteration by the written attestation,—

(*a*) if in India, of some shipping master or customs collector, or

(*b*) if outside India, by an Indian consular officer or at any port outside India at which no Indian consular officer is available, any such person as is authorised in this behalf by the Central Government by notification in the Official Gazette".

Insertion of new section 130A.

8. After section 130 of the principal Act, the following section shall be inserted, namely.—

Certain undisbursed amounts to be utilised for welfare of seamen.

'130A. Subject to the provisions of section 160 and to such restrictions and conditions as may be prescribed, any amount deposited with or recovered by the shipping master for making payment in accordance with the allotment note made by a seaman or for being paid to a seaman or his nominee may, if such amount remains unclaimed with the shipping master for a period of not less than six years, be utilised for the welfare of seamen in such manner as the Central Government may direct".

Amendment of section 132.

9. In section 132 of the principal Act, in clause (*a*) of sub-section (*1*), for the words three hundred rupees', the words "three thousand rupees" shall be substituted

Amendment of section 137

10. In section 137 of the principal Act, in sub-section (*1*), for the words "one month from the date of the agreement", the words "one month from the date on which the seaman's right to wages begins" shall be substituted

Amendment of section 141.

11. In section 141 of the principal Act, in sub-section (*3*), for the words "to his legal heirs", the words "to the person nominated by him in this behalf under section 159A or if he has not made any such nomination or the nomination made by him is or has become void, to his legal heirs" shall be substituted.

Amendment of section 159.

12. In section 159 of the principal Act,—

(*a*) in the opening portion for the words "such sums as he thinks proper to allow, may—", the words, figures and letter "such sums as he thinks proper to allow, shall pay and deliver the residue to the person nominated by the seaman or apprentice in this behalf under section 159A and if he has not made any such nomination or the nomination made by him is or has become void, the shipping master may—" shall be substituted;

(*b*) in clause (*b*), after the words and figures "the Indian Succession Act, 1925", the words and figures "or a certificate under section 29 of the Administrators-General Act, 1963" shall be inserted. 39 of 1925. 45 of 1963.

Insertion of new section 159A.

Nomination.

13. After section 159 of the principal Act, the following section shall be inserted, namely:—

"159A. (*1*) A seaman may, for the purposes of sub-section (*3*) of section 141 and clause (*b*) of section 159 and an apprentice may, for the purposes of clause (*b*) of section 159, nominate any person or persons:

Provided that if the seaman or the apprentice has a family, he may nominate for the purposes aforesaid any one or more members of his family only and if a seaman or an apprentice acquires a family after he has made any such nomination, the nomination shall become void.

(*2*) The form in which any nomination may be made under sub-section (*1*), the cancellation or variation of any such nomination (including the making of a fresh nomination) and all other matters connected with such nominations shall be such as may be prescribed.".

Amendment of section 160.

14. In section 160 of the principal Act, in sub-section (*2*), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that if, before the expiration of six years after the proceeds of the sale have been so paid, no claim is made thereto the amount or any part thereof may be utilised for the welfare of seamen in such manner as the Central Government may direct.".

Insertion of new section 177A.

Power to make rules to prevent accidents, etc.

15. After section 177 of the principal Act, the following section shall be inserted, namely —

"177A. (*1*) The Central Government may, having regard to the provisions of the Convention concerning the Prevention of Occupational Accidents to Seafarers adopted by the General Conference of the International Labour Organisation on the 30th day of October, 1970, make rules so as to ensure safe working conditions for Indian ships and for preventing accidents and different rules may be made for different classes of ships and for ships of the same class in different circumstances.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely —

(a) the manner in which any equipment or gear may be maintained, inspected or tested and conditions as to such maintenance, inspection and testing;

(b) the manner in which the use of any material or process shall be regulated for the manufacture of any such equipment or gear;

(c) the provision of safe means of access to such equipment or gear for the use of seamen and provision of protective clothing for seamen where necessary;

(d) restriction on the hours of employment of seamen in any specified operation or under any specified circumstances; and

(e) the manner and form in which and the persons to whom any accident occurring on board a ship shall be reported.".

Amendment of section 194.

16. In section 194 of the principal Act, in clause (*d*), for the words "officer of the ship", the words "officer of, or a seaman or an apprentice belonging to, the ship" shall be substituted.

Amendment of section 204.

17. To section 204 of the principal Act, the following proviso shall be added, namely:—

"Provided that the provisions of this section shall not extend to the case in which the harbour or secreting is by the spouse of the seaman or apprentice.".

Amendment of section 299A.

18. In section 299A of the principal Act, in sub-section (*1*),—

(a) in the opening portion, the words "of five hundred tons gross or more" shall be omitted;

(b) in clause (*a*), for the words "if the ship performs international voyages", the words "if the ship is of five hundred tons gross or more and performs international voyages" shall be substituted.

Amendment of section 365.

19. In the principal Act, section 365 shall be re-numbered as sub-section (*1*) thereof and after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Subject to any rules made in this behalf by the Central Government, the court making an investigation or inquiry under this Part may, if it thinks fit, order the payment, on the part of that Government, of the reasonable expenses of any witness attending for the purposes of such investigation or inquiry before such court.".

Amendment of section 402.

20. In section 402 of the principal Act, in sub-section (3),—

(a) after the words "Indian Navy", the words "or of the Coast Guard" shall be inserted;

(b) the following *Explanation* shall be inserted at the end, namely —

'*Explanation*.—"Coast Guard" means the Coast Guard constituted under section 3 of the Coast Guard Act, 1978.'.

30 of 1978.

Insertion of new sections 434A and 434B.

21. After section 434 of the principal Act, the following sections shall be inserted, namely:—

Insurance of members of crew of a sailing vessel.

"434A. (*1*) Subject to the other provisions of this section and the scheme framed under sub-section (*3*), the owner of every sailing vessel shall take and keep in force, in accordance with the provisions of the said scheme, a policy of insurance whereby all the members of the crew of such vessel are insured against death or personal injury caused by accident in the course of employment as such members.

(*2*) It shall be the responsibility of the owner of every sailing vessel to bear the expenses incidental to the taking of the policy of insurance referred to in sub-section (*1*) and to pay the premiums for keeping it in force:

Provided that the maximum amount which the owner of the sailing vessel shall be liable to pay by way of premiums per year shall not exceed—

(*a*) where the number of members of the crew is not more than ten, one hundred and fifty rupees;

(*b*) where the number of members of the crew is more than ten, a sum calculated at the rate of fifteen rupees for each member of the crew.

(*3*) The Central Government may, by notification in the Official Gazette, frame a scheme providing for the insurance of all persons employed as members of the crew of sailing vessels against death or personal injury caused by accident arising in the course of their employment as such members.

(*4*) Without prejudice to the generality of the provisions of sub-section (*3*), a scheme framed under that sub-section may provide for—

(*a*) the amount which should be payable in the case of personal injury resulting in the death of a member of the crew of a sailing vessel due to accident and in the case of other injuries:

Provided that different amounts may be provided in respect of different personal injuries not resulting in death;

(*b*) the procedure for payment of such amounts; and

(*c*) all other matters necessary for giving effect to the scheme.

(*5*) Where, under the provisions of any other law for the time being in force, compensation is payable in respect of death or personal injury sustained by a member of the crew of a sailing vessel as a result of an accident in the course of his employment as such member, then if the amount payable in respect of such death or personal injury in accordance with the scheme framed under this section—

(*a*) is equal to, or more than, the compensation payable under such other law, no compensation shall be payable under such other law;

(*b*) is less than the compensation payable under such other law, the compensation payable under such other law shall be reduced by the said amount.

(*6*) Every scheme framed by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme.

Policy of insurance.

434B. (*1*) No sailing vessel shall ply or proceed to sea unless there is in force in respect of the members of the crew of the vessel a policy of insurance complying with the requirements of section 434A and the scheme framed thereunder.

(*2*) No customs collector shall grant a port clearance to a sailing vessel until after production by the owner of such a policy of insurance.".

Amendment of section 436.

22. In section 436 of the principal Act, in the Table, the existing serial number 137 shall be re-numbered as serial number 136A, and after serial number 136A as so re-numbered, the following serial number and the entries relating thereto shall be inserted, namely:—

1	2	3	
"137	If the owner fails to comply with sub-section (1) of section 434A	434A(1)	Imprisonment which may extend to six months, or fine which may extend to five thousand rupees, or both.".

STATEMENT OF OBJECTS AND REASONS

The Merchant Shipping Act, 1958 was enacted over two decades ago. The Act has been amended many a time either to give effect to the International Conventions on maritime matters or on the basis of the experience gained in administering the provisions of the Act. The defects and deficiencies which have come to light subsequent to the amendments last made, have been further examined by the National Shipping Board, an Advisory Board on maritime matters constituted under section 4 of the said enactment. It is considered necessary to give effect to the recommendations of the National Shipping Board. It is also felt that this opportunity may be taken to adopt the provisions of the Prevention of Accidents (Seafarers) Convention, 1970 by incorporating a suitable provision in the Act.

2. Some of the salient proposals are:—

(1) Section 101 of the Act provides that articles of agreement with the crew shall be signed by the master and the seamen. It is considered desirable to amend the section by providing that owners or agents of ships should also be required to sign the agreement so as to bind them to the obligations cast by the agreement of ship owners with respect to payment of wages and other provisions protecting the interests of seafarers (*vide* clause 4).

(2) According to the Merchant Shipping Act, 1958, employment of Indian seaman at Indian ports is done only through seamen's employment office. As an exception, however, section 102 permits the master of a foreign flag ship to engage a seaman, not being a holder of a certificate of continuous discharge at a port in India, otherwise than through the seamen's employment office. Accordingly, whenever there is any casual vacancy on board a foreign flag ship at an Indian port, the master may either engage an Indian national who does not hold a certificate of continuous discharge or he may engage a non-Indian national, whether holder of a certificate of continuous discharge issued by his country or not. It has been noticed that by and large, masters of foreign flag ships employ foreigners who often come to Indian ports to avail of such casual vacancies. Thus, while a certificate of continuous discharge holding Indian national is debarred from seeking employment foreigners of any nationality can seek employment on such basis. In order to remedy this situation, it is proposed to substitute section 102 so as to confine the scope to engagement by a foreign flag ship at an Indian port to seamen who either belong to the flag State or to the State where the rest of the crew of the ship were engaged, presumption being that in the absence of such seaman being available at Indian port, employment would naturally be offered to Indian seamen holding certificate of continuous discharge (*vide* clause 5).

(3) At present there is no provision in the Act for application of moneys deposited with shipping masters on behalf of seamen which remain undisbursed or unclaimed. There are however two provisions, namely, section 137(2) and section 141(3) in the Act under which such moneys can be deposited with the shipping masters. As a welfare measure, it is proposed to make a provision that if no claim for the moneys so deposited with the shipping masters is received for a period of six years, then the said amount would, subject to the orders of the Central Government, be utilised for the welfare of the seamen (*vide* clause 8).

(4) Section 141(3) provides that any amount payable by way of compensation to the deceased seamen can be paid to his legal heirs. As the legal formality required to be completed for establishing a heir is cumbersome, it is proposed to provide that compensation may be paid to a person nominated by a seaman, subject to the condition that in the case of a seaman having a family, the nominee shall be a member of his family. For this purpose, it is proposed to amend section 141(3) and also to define the expression "family" in section 3 of the Act (*vide* clauses 2 and 11).

(5) Section 159(b) provides that for considering eligibility for a claim for moneys due to a deceased seaman, the shipping master may require production of a probate, letters of administration or a certificate issued under the Indian Succession Act. As the procedure for obtaining a certificate under section 29 of the Administrators-General Act, 1963 is more expeditious, it is proposed to amend this section to make a provision that a certificate issued by the Administrator-General under section 29 of that Act would also be sufficient for payment of wages due to a deceased seaman (*vide* clause 13). This would facilitate in the early settlement of claims up to the limit of Rs. 50,000/- provided for in the said section 29.

(6) At present there is no provision in the Act for the prevention of occupational accidents to seafarers. The International Labour Organisation has adopted a Convention on the subject and Government, in consultation with the representatives or organisations of ship owners and seafarers, proposes to ratify and implement the provisions of the said Convention. It is accordingly proposed to make a provision in the Act to confer power on the Central Government to make rules so as to ensure safe working conditions on Indian ships and for preventing occupational accidents (*vide* clause 15).

(7) It is proposed to include suitable provision providing for the insurance of the members of the crew of sailing vessel against death or personal injury caused by the accident in the course of empolyment. An obligation is sought to be cast on the owner of each sailing vessel to take and keep in force a policy of insurance

for this purpose. Provision is also being made that no sailing vessel shall ply unless there is in force a policy of insurance for the crew of the sailing vessel and also no customs collector shall grant port clearance to a sailing vessel until after production of a policy of insurance (*vide* clause 21).

3. Amongst the other amendments included in the Bill, mention may be made in particular of the following:

(a) Provision requiring crew to report any change to the concerned seamen's employment office (*vide* clause 6).

(b) Authorisation of persons to carry on alterations in agreement with crew in ports where there are no Indian consular officers (*vide* clause 7).

(c) Provision to empower the shipping master to decide disputes involving Rs. 3,000 and below instead of Rs. 300 and below as at present (*vide* clause 9).

(d) Modification regarding the commencement of payment under an allotment note laid down in section 137 (*vide* clause 10).

(e) Provision to make an assault on apprentice, seamen or other persons on the ship also an offence under section 194 (*vide* clause 16).

(f) Provision to enable the court to direct the Government to pay conveyance and daily allowance to the witnesses in various investigations and inquiries (*vide* clause 19).

(g) Section 436 has been amended to provide for the punishment for the violation of offence under new section 434A (*vide* clause 22).

4. The remaining amendments included in the Bill are of a minor or consequential nature.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 1st November, 1983.

K. VIJAYABHASKAR REDDY.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 15 of the Bill seeks to insert a new section 177A in the principal Act which empowers the Central Government to make rules for the purposes of preventing occupational accidents to seafarers and to give effect to the provisions of International Labour Organisation Convention No. 134. The purposes, *inter alia*, are as under:—

(*a*) The manner in which any equipment or gear may be maintained, inspected or tested and condition for such maintenance, inspection and testing;

(*b*) The manner in which the use of any material or process shall be regulated for the manufacture of any such equipment or gear;

(*c*) The provision of safe means of access to such equipment or gear for the use of seamen and provision of protective clothing for seamen where necessary;

(*d*) Restrictions on the hours of employment of seamen in any specified operation or under any specified circumstances; and

(*e*) The manner and form in which and the person to whom any accident occurring on board a ship shall be reported.

2. Clause 19 of the Bill seeks to include an express provision in section 365 of the principal Act relating to the power of the court under that section to order, subject to any rules made by the Central Government in this behalf, payment of reasonable expenses of a witness attending an investigation or inquiry. Such a power is even now available under the section to the court, as it is a power exercisable by it under section 312 of the Code of Criminal Procedure, 1973 in the exercise of its criminal jurisdiction. However, whereas the power under the Code of Criminal Procedure, 1973 is subject to any rules made by the State Government, the power under the proposed amendment will be subject to rules made by the Central Government.

3. Clause 21 of the Bill seeks to insert a new section 434A in the principal Act to empower the Central Government to frame a scheme for providing for the insurance of all persons employed as members of the crew on sailing vessels against death or personal injury caused by accident arising in the course of their employment as such members.

4. The delegation of legislative power under the aforementioned provisions relate to matters of procedure or administrative detail. Hence, the delegation of legislative power is normal in character.

AVTAR SINGH RIKHY,
Secretary.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1983